



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0118]

RIN 1625-AA00

Safety Zone, Volvo Ocean Race Newport; East Passage, Narragansett Bay, RI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the East Passage, Narragansett Bay, RI, during the Volvo Ocean Race Newport marine event from May 17 to May 21, 2018. This safety zone is intended to safeguard mariners from the hazards associated with high-speed, high-performance sailing vessels competing in inshore races on the waters of the East Passage, Narragansett Bay, RI. Vessels will be prohibited from entering into, transiting through, mooring, or anchoring within this safety zone during periods of enforcement unless authorized by the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative or Patrol Commander (PATCOM).

DATES: This rule is effective from 11 a.m. May 17, 2018 through 7 p.m. May 21, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0118 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Arthur Fooks, Waterways Management Division, Sector Southeastern New England, U.S. Coast Guard; telephone 401-435-2355, email Arthur.E.Fooks@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because it is impractical to provide and publish an NPRM with a full comment period. This safety zone is necessary to ensure the safety of vessels and persons in the East Passage before, during, and after the event. It is impractical to publish an NPRM, request comment, and then publish a final rule as this safety zone must be effective by May 17, 2018.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable because, in order to protect persons and vessels

from the dangers associated with the scheduled event, it is necessary the safety zone is established by May 17, 2018.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP) Southeastern New England has determined that the Newport Volvo Ocean Race presents a potential safety concern to vessels, people, and the navigable waters of the East Passage of Narragansett Bay in the vicinity of Newport, R.I. This event is part of a world-wide race and it is expected to generate national and international media coverage, in addition to spectators on a number of recreational and excursion vessels. As a result, this rule is needed to ensure the safety of vessels and the navigable waters in the East Passage before, during, and after the scheduled event.

IV. Discussion of the Rule

The Coast Guard is establishing this safety zone, in conjunction with the Volvo Ocean Race Newport, to ensure the protection of the maritime public and event participants from the hazards associated with large-scale marine events. This safety zone is of similar dimension and duration to the one established in 2015. The safety zone will extend from an east-west line across the East Passage of Narragansett Bay at the Newport Pell Bridge south to the COLREGS demarcation line between Brenton Pt and Beavertail Pt. The safety zone will be enforced only during times of actual sailing vessel racing.

The East Passage of Narragansett Bay is the site of many marine events each year. As a result, vessel traffic, particularly recreational vessel traffic, is frequently required to utilize the West Passage of Narragansett Bay. Accordingly, the West Passage of Narragansett Bay may be a

viable option for recreational vessels as well as many tug/barge combinations and smaller commercial vessels during the Volvo Ocean Race Newport.

Regardless, the Coast Guard anticipates that some commercial and/or recreational vessels may still need to transit the East Passage of Narragansett Bay for a variety of reasons, including destination, familiarity with the waterway, tide restrictions, etc. Vessels may be able to continue transits through the East Passage, even during enforcement of the safety zone, as there may be sufficient room for most recreational vessels, and some commercial vessels, to pass to the west of the safety zone. Also, the Coast Guard routinely works with the local marine pilot organization and shipping agents to coordinate vessel transits during marine events in the East Passage, and will continue to do so for the entire event to avoid major interruptions to shipping schedules.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. We expect the adverse economic impact of this rule to be minimal. Although this regulation may have some adverse impact on the public, the potential impact will be minimized for the following reasons: the safety zone will be in effect for a maximum of eight hours each day for five consecutive days; vessels will only be restricted from the zone in the East Passage of Narragansett Bay during those limited periods when the races are actually ongoing; during periods when there is no actual racing (e.g., racing vessels transiting from the pier to the racing site, downtime between races, etc.) vessels may be allowed to transit through the safety zone; there is an alternate route, the West Passage of Narragansett Bay, that does not add substantial transit time, is already routinely used by mariners, and will not be affected by this safety zone; many vessels, especially recreational vessels, will still have sufficient room to transit the affected waterway; and vessels may enter or pass through the safety zone with the permission of the COTP or the COTP's representative.

Notification of the Volvo Ocean Race Newport and the associated safety zone will be made to mariners through the Rhode Island Port Safety Forum, Local Notice to Mariners, event sponsors, and local media well in advance of the event.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small

entities.

This rule will affect the following entities, some of which might be small entities: owners or operators of vessels intending to transit, fish, or anchor in the East Passage of Narragansett Bay, RI, during the Volvo Ocean Race Newport sailing races.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone

in conjunction with the four-day Volvo Ocean Race Newport event and a fifth day reserved as a “rain date” should inclement weather delay scheduled races. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination will be available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0118 to read as follows:

**§165.T01-0118 Safety Zone for Volvo Ocean Race Newport, East Passage,
Narragansett Bay, RI.**

- (a) *Location.* The following area is a safety zone: From an east-west line across the

East Passage of Narragansett Bay at the Newport Bridge south to the COLREGS demarcation line between Brenton Pt and Beavertail Pt.

(b) *Enforcement period.* Vessels will be prohibited from entering this safety zone, when enforced, during the Volvo Ocean Race Newport sailing vessel racing events each day between 11 a.m. and 7 p.m. from Thursday, May 17, 2018 to Monday, May 21, 2018.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated representative.* A “designated representative” is any Coast Guard commissioned, warrant, petty officer, or designated Patrol Commander of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Southeastern New England (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official patrol vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) *Patrol commander.* The Coast Guard may patrol this safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign “PATCOM.”

(4) *Spectators.* Includes persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* (1) The general regulations contained in § 165.23 as well as the following regulations apply to the safety zone established in conjunction with the Volvo Ocean Race Newport, East Passage, Narragansett Bay, Newport, RI. These regulations may be enforced

for the duration of the event.

(2) Approximately one hour prior to race start time each day of the event, the Coast Guard will announce via Safety Marine Information Broadcasts and local media the times and duration of each sailing race scheduled for that day, including the precise area(s) of the safety zone that will be enforced.

(3) Vessels may not transit through or within the safety zone during periods of enforcement without Patrol Commander approval. Vessels permitted to transit must operate at a no-wake speed, in a manner which will not endanger participants or other crafts in the event.

(4) Spectators or other vessels shall not anchor, block, loiter, or impede the movement of event participants or official patrol vessels in the safety zone unless authorized by an official patrol vessel.

(5) The Patrol Commander may control the movement of all vessels in the safety zone. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(6) The Patrol Commander may delay or terminate the Volvo Ocean Race at any time to ensure safety. Such action may be justified as a result of weather, traffic density, spectator actions, or participant behavior.

Dated: April 16, 2018.

R. J. Schultz,

Captain, U.S. Coast Guard,

Captain of the Port Southeastern New England.

